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HIGH COURT OF CHHATTISGARH AT BILASPUR

S.B. : HON'BLE JUSTICE SHRI SATISH K. AGNIHOTRI

WRIT PETITION (C) No. 2382 of 2007

PETITIONER DEFENDANT : Moti Singh Thakur, S/o Manku Singh Thakur, Aged about 45 years, R/o Near Government Primary School, Kota, Raipur, Tahsil & District Raipur (C.G.)

VERSUS

RESPONDENTS PLAINTIFF : Badri Prasad Mishra, S/o Late Shri Shankar Lal Mishra, Aged about 45 years, R/o Amanaka, Kota, Raipur, Tehsil & District Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA.

Present: Mr. B.D.Guru, Advocate for the petitioner.
None for the respondents.

ORDER

(Passed on 18th day of April, 2007)

1. This petition, filed under Article 227 of the Constitution of India, challenges the legality and validity of the impugned order dated 23.02.2007 wherein the application filed under Order 17 Rule 1 of the Code of Civil Procedure, was dismissed.

2. The facts, in nutshell are that the respondent no. 1 filed a civil suit before the District Judge, Raipur for recovery of money to the tune of Rs. 2,48,000/- on 21.12.1999. The petitioner filed one application for referring the matter to the hand writing expert to verify the veracity of the promissory note (Exhibit P/1) under section 45 of The Indian Evidence Act, 1872, read with section 151 of the Code of Civil Procedure. The said application was rejected by order dated 10.03.2005. The petitioner, without questioning the validity of the said order before the superior Court,

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filed another application under order 17 rule 1 read with section 151 of the Code of Civil Procedure. The said application was opposed by the respondent/plaintiff to the extent that the petitioner/defendant cannot be permitted to raise the same issue which has once been rejected by the Ditrict Court and the same has attained finality.

3. The learned First Additional District Judge, Raipur, after having considered all the aspects of the matter, declined to accept the second application and rejected the same by the impugned order.

4. I have heard the learned counsel appearing for the petitioner and perused the pleadings and documents appended thereto. I do not find any perversity, illegality or irregularity in the order impugned herein.

5. It is well settled principle of law that under Article 227 of the Constitution of India, this Court has jurisdiction of judicial review of the order passed by the Court below, in the event, there is manifest and apparent error on the face of the proceedings based on the clear ignorance or utter disregard to the provisions of law or there is grave failure of justice or grave injustice has occasioned thereby. Further, this Court can also entertain the petition in its supervisory jurisdiction if there is perversity, irregularity or illegality in the process of decision, not in the decision itself.

6. Applying the above settled principles of law to the facts of the present case, it does not warrant an interference with the impugned order passed by the Court below.

7. Thus, this petition is dismissed. No order as to costs.

Sd/-
Satish K.Agnihotri
Judge

Amit